IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 229 OF 2005

Sudhakar Dattaram Yedruk ... Appellant

v/s.

The State of Maharashtra ... Respondent

Mr. A.P. Mundargi with Kunal Cheema for the appellant.
Mr. V.B.K. Deshmukh, A.P.P. for the Respondent.

CORAM: **V.G. PALSHIKAR &**
SMT. NISHITA MHATRE, JJ.

DATED: **8TH DECEMBER, 2006**

ORAL JUDGMENT PER SMIT. NISHITA MHATRE, J.):

1. By this appeal the accused challenges his conviction and sentence under Section 302 of the Indian Penal Code, by the Additional Sessions Judge, Sindhudurga.

2. The story of the prosecution is that, the appellant in the present appeal, who was accused No.1 before the Sessions Court, was married to the victim Vishakha on 27.5.2001. He and his brother, accused No.2 were rikshaw drivers. Vishakha had complained to her relatives about the ill-treatment meted out to her by the appellant and his brother. She had gone to stay with her parents and had returned a few days prior to

the incident. On 18.1.2004 at about 1.45 pm, the appellant and his relatives had brought Vishakha to hospital for the treatment. On examination, the medical officer on duty declared her dead and he accordingly intimated the police. An inquest panchanama was drawn at about 7.00 am. The autopsy was conducted at 1.00 pm. On the basis of the doctor's report that the death was homicidal, the appellant and his brother who was arraigned as accused No.2 were arrested. By the impugned judgment, accused No.2 has been acquitted, while accused No.1, the present appellant, has been convicted under Section 302 of the Indian Penal Code.

3. The prosecution has relied on four witnesses to prove its case against the accused. The accused has examined one witness in support of their case. The medical officer who was examined as PW-1, conducted the post-mortem examination on the dead body. According to this doctor, there was well marked rigor mortis on the whole body. Besides, a ligature mark on the neck of the deceased, there were other injuries indicating the signs of a struggle. According to the doctor, these injuries are not found in the case of a suicidal death due to strangulation. The doctor has opined that the victim died a homicidal death. The article used to

strangulate the deceased is an "odhani". The doctor has also, while conducting the post-mortem examination, found that the stomach contained food particles which indicated that the last meal had been partaken three hours prior to her death.

4. The victim’s brother PW-2 has spoken about her complaining to him about the ill-treatment which she had to suffer because of the appellant and his brother i.e. accused Nos. 1 and 2. He states that the victim had informed him that the appellant and his brother used to assault her. This witness learnt that his sister was admitted to the hospital about 6.00 am on 18.1.2002. According to him, the victim’s mother-in-law had informed him that she had committed suicide using an "odhani". Not being convinced by this story, PW-2 lodged a complaint against the appellant and his brother. The sister-in-law of the victim has also been examined as PW-3. She has also spoken about the ill-treatment which the victim suffered at the hands of the accused and the other members of his family including her mother-in-law. She claims that prior to her death, Vishakha had visited them when the appellant and his mother came there and assaulted Vishaka on the road outside their house. According to this witness, they snatched the Mangalsutra off

Vishakha's neck, thereby breaking it and left the spot taking the Mangalsutra with them. The appellant returned that same evening and pursuaded the victim to return home.

5. The last witness examined by the prosecution is the investigating officer. He has drawn the inquest panchanama and spot panchanama. The F.I.R. was recorded and the clothes of the accused were seized. The investigating officer has proved various panchanamas which were drawn by him.

6. From the evidence led by the prosecution, it is obvious that the death of the victim was homicidal and not suicidal in nature. The evidence on record indicates that there were injuries on the wrist of the deceased as well as multiple superficial abrasion around the ligature mark on the neck. The ligature mark did not completely encircle the neck. PW-1 has, in fact, stated that the ligature mark could not be seen at the back of the neck. However, he has opined that the strangulation was homicidal and not suicidal. Assuming that the death occurred due to asphyxia on account of the homicidal strangulation of the victim, in our opinion, the prosecution has been unable to prove that the appellant is guilty of having committed

culpable homicide.

7. The accused has examined one witness. He is one of the first persons, besides the members of the family of the accused, who has seen the victim after she was found hanging by the appellant. He has stated that he and the appellant had gone to Kunkeshwar Temple on 17.1.2002 in the evening for a religious function. They travelled in the appellant's rikshaw. According to this witness, they attend the programme upto 1.00 am and returned to their village by 1.30 am. He has stated that he got down in front of his house which was at a distance of about 200 ft. from the appellant's house. He has deposed that immediately after returning home, he changed his clothes and was about to sleep when he heard somebody weeping outside the appellants house. He, therefore, went to the appellant's house and found 2-3 other neighbours there. The appellant and his brother seemed disturbed. He entered the house and found the victim was hanging on a wooden beam by an "odhani". According to this witness, accused No.2 i.e. the appellant's brother cut the "odhani" in his presence and then he and both the accused took the victim to hospital where she was declared dead. He has stated that he saw a green odhani around the neck of the victim. He claims that the noose was not

encircling the neck, but a part of it was behind the ear lobe. The testimony of this witness has been discarded totally by the Sessions Court. The reasons set forth by the Sessions Court for not accepting the evidence are absolutely convulted. He has held:

> "21. Deceased Vishakha died in bedroom of accused No.1. As earlier discussed, her neck must have been pressed by somebody while the other person must have held her hands. Therefore, at least two persons were involved in the commission of homicide. However, the incident has taken place at midnight or so. At such odd hours, accused No.2, Mangesh, who is having his separate bedroom cannot be presumed to be present in the bedroom of Vishakha and accused No.1, Sudhakar. The presence of accused No.1 Sudhakar in the bedroom must be presumed. The defence case of alibi is unacceptable. Then it becomes a custodial death. Accused No.1, Sudhakar must have been helped by somebody but there is no direct evidence to show that he was accused No.2. He could have been helped by his father, mother or even a friend. Accused No.1, Sudhakar had a strong reason to commit murder of his wife as within few months after marriage, he was disappointed by the conduct of his wife. The ornaments on the body of the deceased were found intact. The death has taken place in the bedroom. There is no case of any outsider entering into the house of accused to commit murder. The deceased was wearing gold ornaments and those were found intact. Therefore, murder for commission of theft is ruled out. I, therefore, hold that accused No.1, Sudhakar has committed murder with the help of somebody. But there is no evidence that accused No.2 has taken part in the commission of murder.
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> 22. The act of accused No.1 was intentional. He intended to commit homicide and actually committed homicide. There was no question of any grave or sudden provocation to him by the deceased. Therefore, his case does not fall

> under S.304(I) or (II). Hence, I hold accused No.1 guilty of the offence u/s 302 of the I.P.C."

Thus, the entire reasoning is based on conjectures and surmises. Although it has been proved that the victim was harassed and ill-treated, it would not necessarily lead to the conclusion that the appellant had murdered his wife. There is no reason mentioned by the trial Court for not accepting the alibi of the appellant. The deposition of DW-1, in our opinion, is credible. He has seen the victim hanging from the beam. He has deposed that the appellant was with him till 1.30 am when he was dropped off at his house. He heard somebody crying soon thereafter. When he reached the house of the appellant, he found the victim hanging from a beam. In our opinion, there is no reason to disbelieve this witness. Assuming the death is homicidal, the appellant was with DW-1 till 1.30 am and, therefore, could not have committed the offence. The accused No.2 has been acquitted by the trial Court although there is no evidence on record to demonstrate that he was not in the house when the incident occurred.

8. In such circumstances, it would be improper to hold that the appellant is guilty of culpable homicide. We have scrutinized the entire evidence on record and we are unable to accept the findings of the trial Court.

The conviction and sentence of the appellant is set aside.

9. Appeal allowed. The appellant to be set free, if not otherwise required.

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